

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO. 2947 OF 2005

Cana Glass Limited & Anr ...Applicants

Versus

Mr. Sunil Mukutrao Bhosale & Anr ...Respondents

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Ms. Khooshnum R. Daviervalva i/b Mulla & Mulla,
Advocate for Applicants

Mr. B.H. Mehta, A.P.P. for State.

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CORAM: SMT. V.K. TAHILRAMANI, J.

DATED: 4TH OCTOBER, 2005

P. C. :-

1. Heard the learned advocate for the applicants. None appears for the respondent No.1 i.e. original complainant though served. The affidavit in relation to service on respondent No.1 is taken on record.
2. The applicants are facing prosecution under Section 138 of Negotiable Instruments Act. By way of this application, the applicants are praying for cancellation of Non Bailable warrant issued against them by order dated 21.4.2005. The said warrant was issued against the applicants in Case No.141 of 2003 by the learned J.M.F.C. Khalapur.

3. In the present case, it is seen that on 19.3.2005 the matter was before the trial Court. On that day, the matter came to be adjourned for judgment to 22.4.2005. On 21.4.2005 the advocate for the complainant filed an application for taking the matter on board. The said application came to be allowed. On the very same day, non bailable warrant came to be issued against the applicants and the notice was issued to the surety. The said order dated 21.4.2005 came to be challenged by the applicants before the learned Sessions Judge by filing revision. The learned Sessions Judge by order dated 27.4.2005 dismissed the revision on the ground that the revisional power could not be exercised.

4. In the present case it is seen that the matter was adjourned to 22.4.2005, hence, obviously, on 21.4.2005, it was not expected that the applicants would be present before the Court. There was no necessity for issuing N.B.W. against the applicants on 21.4.2005. Had the applicants remained absent on 22.4.2005, in that case the N.B.W. could have been issued against the applicants. On 21.4.2005 there was no justification for the Court to issue any N.B.W. against the applicants. In this view of the matter, the order dated 21.4.2005 issuing N.B.W. against the applicants is quashed and set aside.

5. The learned advocate for the applicants states that the applicants will be represented by an advocate on all occasions and on all dates before the trial Court and in addition thereto on the next date i.e. on 5.10.2005 the applicants shall remain present before the trial Court and thereafter as and when required by the trial Court. This statement is accepted.

6. Application is disposed of.

7. Office to issue an authenticated copy of this order to the parties.

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